Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000658-001 DT 03/04/2013

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT
J. Eaton
Deputy

WESTEND LIGHTRAIL APTS / BILTMORE PROP

CHRISTOPHER R WALKER

v.

MICHELLE PATEL (001)

MICHELLE PATEL
1544 W ELM ST APT 2
PHOENIX AZ 85015

ENCANTO JUSTICE COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case No. CC2012–160805 EV.

Defendant-Appellant Michelle Patel (Defendant) appeals the Encanto Justice Court's determination that she was guilty of a special detainer. Defendant contends the trial court erred. For the reasons stated below, the court affirms the trial court's judgment.

I. FACTUAL BACKGROUND.

On August 17, 2012, Plaintiff filed a special detainer claiming Defendant failed to pay rent for the month of August, 2012. Plaintiff requested (1) the monthly rent of $478.38; (2) late fees of $5.10 per day after the third day totaling $132.60; (3) an administrative fee of $25.50; and (4) attorneys' fees. Defendant was served with the mandatory 5-Day Notice on August 6, 2012, when Plaintiff posted the 5 day notice on the premises. The 5 day notice alleged past due rent of $468.92 plus rent tax of $9.38, totaling $478.38. On August 20, 2012, Defendant filed an Answer and alleged (1) Plaintiff failed to give her proper notice; (2) rent was not paid because Plaintiff violated the ARLTA (Arizona Resident Landlord and Tenant Act) and the requirements of A.R.S. § 33–1321, A.R.S. § 33–1367, and A.R.S. § 33–1381; and (3) Plaintiff's claim was retaliatory because Defendant filed a complaint with "city hall because of a flooding/standing water/black mold problem." Defendant also filed a Counterclaim alleging Plaintiff increased her rent or decreased her services after she complained to "city hall" in April, 2012. Defendant requested $7,500.00 as well as a city inspection to "assure public awareness of the mold issue this apt complex is having."

The trial court held a trial on August 31, 2012.[1] The first witness to testify was the property manager, Maria Lobatos, who said the property was an affordable housing property, which entailed specific paperwork.[2] She stated (1) there were additional paperwork requirements mandated by the affordable housing program;[3] (2) she sent Defendant a number of notices providing information about the rent increase; and (3) she began sending these notices in October, 2011.[4] Ms. Lobatos identified Plaintiff's exhibit 1 which included a series of notifications of impending rental increases dating back to October, 2011.[5] Ms. Lobatos explained the proposed rent increase was addressed to a total of 10 people.[6] She also stated Defendant's rent should have been raised to $519.00 but she was reluctant to do so because she knew Defendant received Social Security and had limited income. She said:

> Because I didn't want to raise it that much because I knew that she was on social security, and she only received, I want to say, six forty-seven a month, or she's on supplemental income, so I didn't want to raise it that much, and that's why I only raised it to four sixty-nine.[7]

Ms. Lobatos stated Defendant paid the earlier rent amount—$399.00—on August 1, and Plaintiff sent Defendant a letter stating they did not accept partial payments.[8] She also said Defendant (1) had a copy of the 30 day notice when Defendant picked up her money order; and (2) she told Defendant she would remove the late fees if Defendant would pay the "four sixty nine plus the tax."[9] Defendant cross-examined Ms. Lobatos who admitted it might not be fair for some of the tenants to receive a lesser increase[10] but Plaintiff's counsel explained Defendant was treated more favorably than other people.[11]

Defendant testified and said she knew other people were getting rent increases because there "were flyers everywhere" and she knew the increase was to $519.00.[12] On redirect, Ms. Lobatos stated she hand delivered the notice of rent increase on June 30.[13] The trial court determined the rent increase was not retaliatory and stated:

> I specifically note that if there was a complaint, -- any suggestion of retaliation has been rebutted by the testimony of the increases for various people and the way this one was handled.[14]

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[1] Transcript, Trial, August 31, 2012.
[2] *Id*. at p. 8, ll. 23–25; p. 9, ll. 1–12.
[3] *Id*. at p. 9, ll. 10–12.
[4] *Id*. at p. 9, ll. 16–23.
[5] *Id*. at p. 10, ll. 1–24; p. 12, ll. 5–10.
[6] *Id*. at p. 13, ll. 13–14–19.
[7] *Id*. at p. 15, ll. 3–8.
[8] *Id*. at p. 16, ll. 24–25; p. 17, ll. 1–8.
[9] *Id*. at p. 17, ll. 10–16.
[10] *Id.* at p. 22, ll. 11–23.
[11] *Id*. at p. 24, ll. 9–16.
[12] *Id*. at p. 36, ll. 5–15.
[13] *Id*. at p. 43, ll. 3–25; p. 44, ll. 1–25; p. 45, ll. 1–10.
[14] *Id.* at p. 51, ll. 23–25; p. 52, ll. 1–3.

The trial court entered judgment for Plaintiff and awarded Plaintiff rent for $478.30; late fees of $132.60; a transaction fee of $25.50; court costs of $93.00 and attorneys' fees of $350.00.

Defendant filed a timely appeal. Plaintiff—Westend Lightrail Apts. / Biltmore Prop.—filed a responsive memorandum. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES:

A. *Did The Trial Court Abuse Its Discretion By Determining Plaintiff Provided Notice Of The Proposed Increase In Rent.*

Defendant's first claim relates to the trial court finding Plaintiff properly provided notice to Defendant of the proposed increase in her rent. In making this finding, the trial court considered (1) Plaintiff provided notice of a rental increase in October, 2011, but Plaintiff did not make any complaint about repairs to her apartment until April, 2012,—approximately six months following the first notice of a pending increase; (2) Plaintiff sent notices of projected rent increase to nine other tenants; (3) Plaintiff proposed a lesser increase for Defendant than offered to other tenants of similar size apartments; and (4) Plaintiff testified it delivered specific notice of the new rental amount on June 30, with the proposed increase to take effect on August 1. In contrast, Defendant argued she was not given proper notice of the rent increase.

Trial courts resolve conflicts in evidence. *Vanessa H. v. Arizona Dept. of Economic Sec.*, 215 Ariz. 252, 257 ¶ 22, 159 P.3d 562, 567 ¶ 22 (Ct. App. 2007). Here, the conflict relates to whether Plaintiff (1) provided proper advance notice of the rent increase and (2) acted in a retaliatory manner by raising Defendant's rent within six months after she filed a complaint about the repairs to her apartment. These are questions which relate to the sufficiency of Plaintiff's evidence to sustain its burden of proof.

In addressing the question of sufficiency of the evidence, the Arizona Supreme Court said the following:

> We review a sufficiency of the evidence claim by determining "whether substantial evidence supports the jury's finding, viewing the facts in the light most favorable to sustaining the jury verdict." Substantial evidence is proof that "reasonable persons could accept as adequate . . . to support a conclusion of defendant's guilt beyond a reasonable doubt." We resolve any conflicting evidence "in favor of sustaining the verdict."

State v. Bearup, 221 Ariz. 163, 167, ¶ 16, 211 P.3d 684, 688, ¶ 16 (2009) (citations omitted). This rationale applies to judge trials as well as to jury trials. Where there is a conflict in evidence, the appellate court will usually resolve the conflict by sustaining the verdict of the trial court. In addressing the role of the appellate court when reviewing conflicting evidence the Arizona Supreme Court held:

> Something is discretionary because it is based on an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge, who has a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers, and witnesses, and who can better assess the impact of what occurs before him. Where a decision is made on that basis, it is truly discretionary and we will not substitute our judgment for that of the trial judge; we will not second-guess. Where, however, the facts or inferences from them are not in dispute and where there are few or no conflicting procedural, factual or equitable considerations, the resolution of the question is one of law or logic. Then it is our final responsibility to determine law and policy and it becomes our duty to "look over the shoulder" of the trial judge and, if appropriate, substitute our judgment for his or hers.

State v. Chapple, 135 Ariz. 281, 297 n. 18, 660 P.2d 1208, 1224 n.18 (1983) (citation omitted). Here, the trial court had the authority to decide the facts. Absent compelling proof as to how the trial court erred, this Court must sustain the trial court's factual determination. The trial court had the opportunity to see the parties and witnesses and to evaluate their testimony. These are "procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge." Therefore, absent an abuse of discretion, the trial court's decision is not changed on appeal. *Brown v. U.S. Fidelity and Guar. Co*., 194 Ariz. 85, 88 ¶ 7, 977 P.2d 807, 810 ¶ 7 (Ct. App. 1998).). As stated in *Yauch v. S. Pac. Transp. Co.,* 198 Ariz. 394, 399, ¶ 10, 10 P.3d 1181, 1186, ¶ 10 (Ct. App. 2000) [citations omitted]:

> Generally, we will affirm a trial court's admission or exclusion of evidence absent a clear abuse of discretion or legal error and resulting prejudice. However, we review de novo questions of alleged legal error, including those relating to evidentiary rulings.

It is not the function of the appellate court to reweigh the evidence. *Brown v. U.S. Fidelity and Guar. Co*., *id.*, 194 Ariz. at 91–92 ¶ 36, 977 P.2d at 813–814 ¶ 36; *Lashonda M. v. Arizona Dept. of Economic Sec.*, 210 Ariz. 77, 81 ¶ 13, 107 P.3d 923, 927 ¶ 13 (Ct. App. 2005). The appellant must demonstrate how the trial court erred. In *Acuna v. Kroack*, 212 Ariz. 104, 113, ¶ 35 128 P.3d 221, 230, ¶ 35 (Ct. App. 2006) the Court of Appeals stated:

> We are mindful of our limitations as an appellate court and of a trial court's superior position and unique perspective in evaluating the sufficiency of evidence.

Accord, Girouard v. Skyline Steel, Inc., 215 Ariz. 126, 129, ¶ 10 158 P.3d 255, 258, ¶ 10 (Ct. App. 2007) [citations omitted] where the Court of Appeals ruled:

> We will not disturb the superior court's ruling on the admissibility of evidence unless it abused its discretion or misapplied the law. The process of weighing the prejudicial impact of evidence against its probative value is a

> function peculiarly within the function of the trial court, which we review for an abuse of discretion.

The trial court weighed the evidence which showed Plaintiff's expressed intent to raise the rent as early as October, 2011, against Defendant's claim she did not receive proper notice. The trial court was also able to consider Plaintiff's statement that it provided a 30 day notice to Defendant on June 30, in ruling Plaintiff received proper notification of the impending rent increase. The trial court did not abuse its discretion in determining notification of the rental increase was properly provided.

B. Was The Rent Increase Retaliatory.

Defendant alleged the rent increase in June was retaliatory but failed to show a basis for this claim at trial. Plaintiff raised the rent for nine tenants at the time Plaintiff raised Defendant's rent. Furthermore, Defendant's rental increase was less than the rental increase requested from the other tenants and Plaintiff notified Defendant—and the other tenants—of the proposed increase months before Defendant filed any complaint. Retaliatory action occurs when the purposes of the action is to punish or retaliate against an individual. As stated in *Van Buren Apartments v. Adams*, 145 Ariz. 325, 326-27, 701 P.2d 583, 584-85 (Ct. App. 1984)[sic.]:

> Retaliatory conduct on the part of the landlord is prohibited by A.R.S. § 33-1381 which states:
>
> "A. Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or *by bringing or threatening to bring an action for possession after any of the following:*
>
> 1. The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety.
>
> 2. *The tenant has complained to the landlord of a violation under § 33-1324.*
>
> 3. The tenant has organized or become a member of a tenants' union or similar organization.
>
> 4. The tenant has complained to a governmental agency charged with the responsibility for enforcement of the wage-price stabilization act.
>
> B. If the landlord acts in violation of subsection A of this section, the tenant is entitled to the remedies provided in § 33-1367 and has a defense in action against him for possession. *In an action by or against the tenant, evidence of a complaint within six months prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation.* The presumption does not arise if the tenant made the complaint after notice of termination of the rental agreement. 'Presumption', in this subsection, means that the trier of fact must find the

> existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.
>
> C. Notwithstanding subsections A and B of this section, a landlord may bring an action for possession if either of the following occurs:
>
> 1. The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in his household or upon the premises with his consent.
>
> 2. The tenant is in default in rent."

There must, however, be some proof of retaliatory conduct and the conduct must occur after the tenant's action. That is not the situation in the Defendant's case. Here, Defendant was one of a group of tenants for whom rent increases were projected. The other tenants, however, had their rent raised to $519.00 while Defendant's rent increase was only to $469.00 for a similar unit. While the rental increases were disparate, the difference favored rather than hurt Defendant. A.R.S. §33–1381 does not prohibit rent increases: it prohibits retaliatory conduct. Retaliation implies an intent to harm a tenant because the tenant hurt or caused the landlord some harm Persuasively, in *Elk Creek Mgmt. Co. v. Gilbert*, 244 Or. App. 382, 390, 260 P.3d 686, 690 (2011) opinion adhered to as modified on reconsideration, 247 Or. App. 572, 270 P.3d 362 (2012) review allowed, 352 Or. 107, 284 P.3d 485 (2012) the Oregon Court of Appeals discussed the concept of retaliation in connection with the Oregon Residential Landlord Tenant Act and said:

> Defendants have not proposed that "retaliate" is a term of legal art, nor have they cited any usage or definition of the term that does *not* involve an intent to compensate for harm by inflicting harm in return. The concept of retaliation as the term is used in ORS 90.385 involves an intention on the part of the landlord to cause some sort of disadvantage to the tenant, motivated by an injury (or perceived injury) that the tenant has caused the landlord.

In T*homas v. Goudreault*, 163 Ariz. 159, 786 P.2d 1010 (Ct. App. 1989) the court found retaliatory conduct when the landlord filed an eviction action after the tenant engaged in self help by removing/cutting down weeds. In *Thomas v. Goudreault, id.*, the landlord ostensibly told the tenant that it would file an eviction action if the tenant had the weeds removed. Here, however, was no evidence that the landlord threatened to bring an eviction action because Defendant complained about the possibility of mold. The landlord's action in raising Defendant's rent was not limited to Defendant—nine other tenants received rental increases. The landlord's action also did not single Defendant out for a rent increase that exceeded those given other tenants. Indeed, Defendant's rent increase was proportionately less than the projected rent increase for the other nine tenants. The trial court found the suggestion of retaliation was rebutted by the testimony of the increases for other tenants and was wholly unrelated to and unmotivated by retaliation.

. . . .

In similar circumstances, our Courts have allowed rent increases for mobile home parks. In O*ne Hundred Eighteen Members of Blue Sky Mobile Home Owners Ass'n v. Murdock*, 140 Ariz. 417, 420, 682 P.2d 422, 425 (Ct. App. 1984), the Court of Appeals held:

> In summary, while recognizing that rental increases may not be imposed in a retaliatory or punitive manner contrary to A.R.S. §§ 33–1413(A) or 33–1491(A), we hold that the Arizona Mobile Home Parks Residential Landlord and Tenant Act does not require a landlord to "negotiate in good faith" concerning a proposed rental increase or decrease.

While O*ne Hundred Eighteen members of Blue Sky Mobile Home Owners Ass'n v. Murdock*, id., refers to the Arizona Mobile Home Parks Residential Landlord and Tenant Act as opposed to ARLTA, the rationale behind the retaliatory conduct provisions is persuasive. Additionally, the landlord—in the current case—gave the tenants advance notice of the proposed rental increase in June. Defendant had the option of remaining at the premises or seeking new housing as she was on a month to month tenancy. She chose to remain.

C. Did The Trial Court Err By Failing To Instruct Defendant About How To Properly Present Her Case.

Defendant complains that the trial court did not advise her about how to proceed with her case and failed to ask her for her exhibits. Defendant appeared *pro se* at the trial and appellate levels. One's *pro se* appearance does not excuse the failure to conform to mandated rules. When individuals represent themselves, those persons are held to the same standard as a lawyer. In *In re Marriage of Williams*, 219 Ariz. 546, 549, ¶ 13, 200 P.3d 1043, 1046 ¶ 13 (Ct. App. 2008) the Arizona Court of Appeals held:

> Parties who choose to represent themselves "are entitled to no more consideration than if they had been represented by counsel" and are held to the same standards as attorneys with respect to "familiarity with required procedures and . . . notice of statutes and local rules." A party's ignorance of the law is not an excuse for failing to comply with it.

[Citations omitted.] Similarly, in *Higgins v. Higgins*, 194 Ariz. 266, 269, 981 P.2d 134, 138 (Ct. App. 1999) the Court ruled:

> One who represents herself in civil litigation is given the same consideration on appeal as one who has been represented by counsel. She is held to the same familiarity with court procedures and the same notice of statutes, rules, and legal principles as is expected of a lawyer.

[Citations omitted.] Accord, *Kelly v. NationsBanc. Mortg. Corp*., 199 Ariz. 284, 287 ¶ 16, 17 P.3d 790, 793, ¶ 16 (Ct. App. 2001). This standard was confirmed in *McNeil v. U.S*., 508 U.S. 106, 113, 113 S. Ct. 1980, 1984, 124 L. Ed. 2d 21 (1993) where the U.S. Supreme Court held:

> Moreover, given the clarity of the statutory text, it is certainly not a "trap for the unwary." It is no doubt true that there are cases in which a litigant proceeding without counsel may make a fatal procedural error, but the risk that a lawyer will be unable to understand the exhaustion requirement is virtually nonexistent. Our rules of procedure are based on the assumption that litigation is normally conducted by lawyers. While we have insisted that the pleadings prepared by prisoners who do not have access to counsel be liberally construed, see *Haines v. Kerner*, 404 U.S. 519, 92 S. Ct. 594, 30 L.Ed.2d 652 (1972); *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S. Ct. 285, 292, 50 L.Ed.2d 251 (1976),[9] and have held that some procedural rules must give way because of the unique circumstance of incarceration, see *Houston v. Lack*, 487 U.S. 266, 108 S. Ct. 2379, 101 L.Ed.2d 245 (1988) (*pro se* prisoner's notice of appeal deemed filed at time of delivery to prison authorities), we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.[10] As we have noted before, "in the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." *Mohasco Corp. v. Silver*, 447 U.S. 807, 826, 100 S.Ct. 2486, 2497, 65 L.Ed.2d 532 (1980).

Trial courts do not advise litigants or lawyers about whether to introduce exhibits. *Because pro se* litigants are treated the same as represented litigants, Defendant's claim fails.

D. Are Defendant's Exhibits Admissible.

Litigants may not introduce new evidence on appeal. Because Defendant failed to introduce these exhibits at trial, she is foreclosed from raising the issue for the first time on appeal. *Dillig v. Fisher*, 142 Ariz. 47, 51, 688 P.2d 693, 697 (Ct. App. 1984). In *Black v. Black*, 114 Ariz. 282, 285, 560 P.2d 800, 803 (1977) the Arizona Supreme Court commented on a party's ability to present new evidence and held that if a party was aware of the circumstances at the time of the original hearing, the evidence was not newly discovered. While the *Black, id*., case dealt with custody issues and a request for a rehearing, the underlying rationale applies to Defendant. See also *United Fence Co., Inc. v. Great-West Life Assur. Co.*, 150 Ariz. 373, 723 P.2d 722 (Ct. App. 1986) where the Arizona Court of Appeals refused to allow additional facts to be introduced in a motion for rehearing of summary judgment. The Court of Appeals ruled the party seeking to introduce the new facts "fails to explain why it did not elicit this testimony" in opposing the summary judgment request. *United Fence Co., Inc., id*., 150 Ariz. at 378, 723 P.2d at 727. The Court of Appeals continued and held the new affidavits were untimely and not newly discovered evidence and said, "The trial court could and did reject these items on this basis alone." *Id*. As stated by the Arizona Supreme Court in *Schaefer v. Murphey*, 131 Ariz. 295, 299, 640 P.2d 857, 861 (1982):

> . . . .
>
> . . . .

> As an appellate court, we are confined to reviewing only those matters contained in the record.

In the case before this Court, the Defendant knew or had the opportunity to introduce her exhibits. She failed to do so. She cannot—at the appellate stage—introduce these exhibits for the first time.

E. Did The Trial Court Err By Assessing Late Fees.

Defendant leased the premises from Plaintiff for one year. Thereafter, she continued as a month to month tenant. Both parties agreed to Defendant's status as a month to month tenant. As such, Defendant was obligated to either leave the premises or be accountable under the prior contract terms. In *Pima County v. Testin*, 173 Ariz. 117, 119, 840 P.2d 293, 295 (Ct. App. 1992), the Arizona Court of Appeals held:

> We are in agreement with the majority of jurisdictions which hold that when a tenant continues in possession after the lease term, the landlord may elect to either treat the tenant as a trespasser, and evict him, or to hold him as a tenant. R. Powell and P. Rohan, 2 *Law of Real Property* ¶ 250 (Rev.Ed.1991); 1 *American Law of Property* § 3.33; Restatement (Second) Property *Landlord and Tenant* § 14.4 (1977).

The Court of Appeals continued and stated:

> If consensual, then the terms and conditions of the holdover tenancy are governed by the provisions of the original lease, including the $100 annual rent. *Mosher v. Sabra, supra; see also* 2 *Law of Real Property* ¶ 250 "Since the periodic tenancy is in fact a continuing relationship, the general rule is that each successive period is treated as a continuation of the original tenancy, unless the parties specifically provide for a different result." Restatement § 1.5, comment c.

Pima County v. Testin, id., 173 Ariz. at 119, 840 P.2d at 295. Because Defendant was a continuing month to month tenant, she was responsible for the provisions of the original lease—provisions which included a penalty for late payments.

F. Was Defendant Entitled To Prevail On Her Claim About The Condition Of The Premises.

On appeal, Defendant raised her claim about the condition of the premises. Although she raised this issue in her counterclaim, she did not include the issue at trial. This Court cannot consider issues that were not raised with the trial court. In *Harris v. Cochise Health Sys.*, 215 Ariz. 344, 349, ¶ 17, 160 P.3d 223, 228, ¶ 17 (Ct. App. 2007) the Arizona Court of Appeals ruled:

> . . . .
>
> . . . .

> Generally, "an appellate court will not consider issues not raised in the trial court." *Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 503, 733 P.2d 1073, 1086 (1987). Although this rule is one of procedure, not jurisdiction, it is "established for the purpose of orderly administration and the attainment of justice." *Id.* Our court has observed that the consideration of belatedly urged issues undermines "sound appellate practice," *id.*, and violates the interests of the party against whom the claim is newly asserted on appeal. *Stokes v. Stokes*, 143 Ariz. 590, 592, 694 P.2d 1204, 1206 (App.1984); *see also Chilton v. Center for Biological Diversity, Inc.*, 214 Ariz. 47, ¶ 11, 148 P.3d 91, 96 (App.2006) (argument waived on appeal when not briefed at trial court level and trial court had no opportunity to consider it). Thus, although Arizona appellate courts have the discretion to hear arguments first raised on appeal, we rarely exercise that discretion. *See, e.g., Hawkins*, 152 Ariz. at 503, 733 P.2d at 1086.

Here, Defendant had the opportunity to raise her claim with the trial court. Indeed, at the close of the trial the trial court (1) asked her what had been proved at trial; and (2) offered her the opportunity to present her case. Defendant did not introduce any exhibits and—other than her own testimony—produced no witnesses. She failed to testify about her counterclaim. She did not bring her claim about Plaintiff's alleged failure to maintain the property before the trial court. She is therefore foreclosed from proceeding with the claim at this stage of the proceedings.

G. Did Plaintiff Properly Present Its Issues On Appeal.

Plaintiff submitted a memorandum that did not comply with the mandatory formatting requirements for a brief in that the font size for the quotations was less than the required size. SCRAP—Civ. Rule 1(c) provides the Arizona Rules of Civil Procedure and the Local Rules of Practice in the Superior Courts govern where no rule is specified. No specific font type or size is mandated by SCRAP—Civ. However, the Superior Court Local Rules—Maricopa County, Rule 2.17 states:

> All typewritten pleadings, motions and other original papers (including text, quotations and footnotes) filed with the clerk shall be in a type size no smaller than ten (10) pitch (10 characters per inch). Those that are printed or otherwise produced with proportional type shall be in a size no smaller than thirteen points.

Plaintiff submitted a brief where the quotations did not comply with the mandatory rules. While SCRAP—Civ. Rule 8(a)(5) provides the Superior Court may "modify or waive the requirements of this rule to insure a fair and just determination of the appeal," counsel is admonished to follow the formal requirements for the font size.

III. CONCLUSION.

Based on the foregoing, this Court concludes the Encanto Justice Court did not err when it found Defendant guilty of a special detainer for not timely paying the increased rent.

IT IS THEREFORE ORDERED affirming the judgment of the Encanto Justice Court.

IT IS FURTHER ORDERED remanding this matter to the Encanto Justice Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Myra Harris
THE HON. MYRA HARRIS
Judicial Officer of the Superior Court 030620130800